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THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT MBARARA  
CRIMINAL APPEAL NO. 0118 OF 2014

*(Coram: Bamugemereire, Madrama & Luswata, JJA)*

KAJOOBA VESENCIA} ..... APPELLANT

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VERSUS

UGANDA} ..... RESPONDENT

*(Appeal from the decision of the High Court Hon. Lady Justice Elizabeth Nahamya at Nakawa Kampala in Criminal Session Case No 301 of 2011 delivered on 4<sup>th</sup> April 2012)*

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JUDGMENT OF COURT

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The Appellant was indicted for the offence of aggravated defilement contrary to section 129 (3), (4) of the Penal Code Act. The facts are that the appellant on 22<sup>nd</sup> of November 2010 at Kinoni Village LC1 Kyegonza sub - county in Gomba district had sexual intercourse with N.A, a girl who was then 11 years old. The appellant pleaded guilty to the offence and was convicted on his own plea of guilty and sentenced to 15 years imprisonment.

The appellant was aggrieved with the sentence of imprisonment only and appealed to this court on one ground of appeal namely:

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That the learned trial judge erred in law and fact when she passed an illegal sentence of 15 years without subtracting the period the appellant spent on remand thereby occasioning a miscarriage of justice.

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The appellant prayed that the pre-trial period he spent on remand be deducted from the sentence imposed by the trial judge.

At the hearing of the appeal, Ms Caroline Nabaasa the learned Principal Assistant DPP appearing with Emily Mutuzo the learned state attorney represented the respondent while learned counsel Ms Shamim Nalule appeared for the appellant on state brief. The appellant attended court

5 via tele video link from Kitalya prison in Wakiso District. Both counsel of the parties addressed the court by way of written submissions and judgment was reserved on notice.

### **Appellant's submissions.**

10 The appellant's counsel submitted that it is a well settled principle that the parties are entitled to obtain from the appellate court its own decision on issues of fact as well as of law (see **Kifamunte Henry v Uganda; Criminal Appeal No 10 of 1997**). The appellant's counsel also relied on the decision of the Supreme Court in **Rwabugande Moses v Uganda SCCA 25 of 2014** for the application of article 23 (8) of the Constitution of the  
15 Republic of Uganda. In that appeal, it was held that the court must take into account the period the convict spent on pre-trial remand before imposing a sentence of a term of imprisonment. Counsel further relied on page 15 of the record of proceedings for the notes of the trial judge in the sentencing proceedings and particularly the words:

20 I will consider the reformatory and rehabilitation principles of sentencing. Hence youthful age and the time spent on remand have been underscored.

According to the appellant's counsel, the word "underscore" used by the trial judge means "emphasised" according to Webster's Dictionary. With reference to the decision of the Supreme Court in **Rwabugande Moses v**  
25 **Uganda** (supra) counsel submitted that the period that the convict spent on remand is known with certainty and precision and ought to be subtracted from the sentence that the trial judge intends to impose for purposes of taking it into account in terms of article 23 (8) of the Constitution of the Republic of Uganda.

30 In the premises the appellant's counsel submitted that the sentence imposed of 15 years imprisonment was an illegal sentence for failure to take into account the period of the convict had spent on remand prior to his sentence in breach of article 23 (8) the Constitution. He prayed that the period of three years and five months that the appellant had spent on  
35 pre-trial remand should be deducted from the sentence of 15 years for the court to arrive at a lawful imprisonment term.

### **Submissions of the respondent in reply.**